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SUPREME COURT, U.S.

80-6607

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

Supreme Court, U.S.
FILED
APR 29 1981
Alexander L. Stevas, Clerk

NO. _____

PAMELA RAY,

Appellant,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

MOTION TO PROCEED IN FORMA PAUPERIS

Comes now Appellant, Pamela Ray, by her attorney, George R. Ripplinger, Jr., and moves the Court to allow her to proceed in forma pauperis and in support thereof says:

1. That the affadavit of appellant is attached hereto.

2. That appellant has been in the custody of the Department of Correction of the State of Illinois since July 6, 1978.

3. That appellant was represented by the Public Defender of St. Clair County, Illinois in the trial court on this matter.

4. That present counsel was appointed by the Chief Judge of the 20th Judicial Circuit to represent appellant in the appeal of this cause without cost to her.

5. That the Appellate Court of Illinois, Fifth District allowed appellant to proceed in forma pauperis.

6. That the Supreme Court of Illinois allowed appellant to proceed in forma pauperis.

George R. Ripplinger, Jr.
2215 West Main Street
Belleville, Illinois 62221
1-618-234-2440
Attorney for Appellant,
Pamela Ray

State of Illinois

IN THE TWENTIETH JUDICIAL CIRCUIT, ST. CLAIR COUNTY, BELLEVILLE, ILLINOIS

PEOPLE OF THE STATE

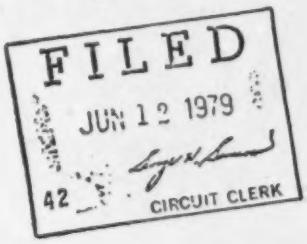
vs.

PAMELA RAY,

Respondent

:Defendant:

No. 78-J-146



ORDER

This cause coming before the Court; the Court being fully advised in the premises and having jurisdiction of the subject matter;

The Court finds: that a Notice of Appeal has been filed in this cause:

IT IS THEREFORE ORDERED:

that, George Ripplinger, is hereby appointed to represent the Respondent, Pamela Ray, for purposes of appeal.

Dated this 11th day of June, 1979.

Judge

White—CC; Yellow—CC (5); Pink—Defendant

CC-107A-10M77
TCS

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

NO. _____

PAMELA RAY,

Appellant,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

AFFADAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Pamela Ray being first duly sworn, deposes and says that I am the Appellant in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

ANSWER: Yes

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

ANSWER: I am incarcerated at Dwight Correctional Institute, Dwight, Illinois, employed as a teacher's assistant at $24.00 per month.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other sources?

ANSWER: No.

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account?

ANSWER: No.

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or orther valuable property (excluding ordinary household furnishings and clothing)?

ANSWER: No.

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

ANSWER: None.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Pamela Ray

Pamela Ray

Subscribed and sworn to before me this 29 day of April, 1981.

Notary Public

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

_____

Justice

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

NO. _____

PAMELA RAY,

Appellant,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

PROOF OF SERVICE

The undersigned, a member of the Bar of the Supreme Court of the United States, after first being sworn upon his oath, deposes and says, that to his knowledge, a copy of the Motion to Proceed in Forma Pauperis and Affidavit in Support of Motion to Proceed on Appeal in Forma Pauperis was served upon Martin N. Ashley, Deputy Director, State's Attorneys Appellate Service Commission, 1907 Broadway, Mt. Vernon, Illinois 62864, John Baricevic, State's Attorney, St. Clair County Building, 10 Public Square, Belleville, Illinois 62220, Clell Woods, Clerk of the Supreme Court of the United States, 1 First Street, N.E., Washington, D.C. 20543 by enclosing the same in an envelope properly addressed as above, with first-class postage fully prepaid, and by depositing said envelopes in the U. S. Post Office mail box in Belleville, Illinois on the 29th day of April, 1981.

George R. Ripplinger, Jr.

Subscribed and sworn to before me this 29th day of April, 1980.

Notary Public

George R. Ripplinger, Jr.
2215 West Main Street
Belleville, Illinois 62221

Attorney for Appellant
Pamela Ray

80-6607

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PAMELA RAY,

Appellant,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

APPEAL FROM THE APPELLATE COURT OF ILLINOIS,

FIFTH DISTRICT,

JURISDICTIONAL STATEMENT

George R. Ripplinger, Jr.
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Belleville, Illinois 62221
1-618-234-2440

Attorney for Appellant,
Pamela Ray

TABLE OF CONTENTS

	Page
Jurisdictional Statement	1
Questions Presented By The Appeal	2
Other Parties	4
Opinions Below	4
Jurisdiction	4
Statement Of The Case	5
Constitutional Provision and Statutes Involved	8
Argument	10
Appendix	i
Opinion of Appellate Court of Illinois	ii
Denial of Certificate Of Importance By Appellate Court of Illinois	viii
Denial of Petition for Leave to Appeal by Illinois Supreme Court	ix
Order of Trial Court	x
Notice of Appeal	xiv
Proof of Service of Notice of Appeal	xv
Motion for Summary Judgment	xvii
Extract from Transcript of Hearing on Motion for Summary Judgment	xxiv
Extract from Appellant's Brief in the Appellate Court of Illinois	xxviii
Extract from Appellant's Petition for Leave to Appeal in the Supreme Court of Illinois	xxxv
Extract from Appellant's Petition for Certificate of Importance to Appeal to the Supreme Court of Illinois	xliv

TABLE OF AUTHORITIES

		Jurisdictional Statement Page
I	CASES	
	Bell v Burson, 402 U.S. 535(1971	10
	In the Interest of Baby Boy Butt 76 Ill. app 3d 587, 395 N.E. 2d 1 (2d Dist. 1979)	3
	Stanley v Illinois, 405 U.S. 645, 31 L. ED 2d 551, (1972)	10
II	Child Abuse and Neglect, R. Helfer and C. Kempe, 1976	10
	The Abused Child, Martin; 1976	10
III	STATUTES	
	Chapter 38, Section 5-1 and 5-2, Illinois Revised Statutes	2
	Chapter 40, Section 1501 (D)(f), Illinois Revised Statutes	2,4,6
	Chapter 110A, Section 315, 316, 317, Illinois Revised Statutes	5
	14th Amendment, United States Constitution	3
	28 U.S.C. 1257 (2)	5

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

NO. _____

PAMELA RAY,

Appellant,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

APPEAL FROM THE APPELLATE COURT OF ILLINOIS,

FIFTH DISTRICT,

JURISDICTIONAL STATEMENT

The appellant, Pamela Ray, appeals from the judgment and opinion of the Appellate Court of Illinois, Fifth District entered in this case on September 18, 1980. The appellant respectfully submits this statement to demonstrate that the Supreme Court of the United States has jurisdiction over the appeal and that a substantial question is presented.

QUESTIONS PRESENTED BY THE APPEAL

1. The trial court granted summary judgment in this cause in favor of appellee and against Pamela Ray on the sole basis of her conviction for causing the death of one of her children by abuse. The Appellate Court of Illinois affirmed. The Supreme Court of Illinois denied review.

a. Summary Judgment was granted even though the conviction was by reason of accountability, Chapter 38, Sections 5-1 and 5-2, Illinois Revised Statutes. Pamela Ray was not proven to have done any affirmative act to harm the deceased child.

b. No evidence was introduced as to her treatment of her living children as to whom her parental rights were terminated with power to the State to consent to adoption.

c. The basis of the ruling of the trial and appellate court is Chapter 40, Section 1501 (D) (f) Illinois Revised Statutes which creates a conclusive presumption that any person found guilty of causing the death by abuse of any child, even if not their own child, is unfit as a parent as to all their living children.

d. Parents who kill children without abusing them or who cause the death of others, by abuse or otherwise, even the other parent, are not automatically and conclusively presumed unfit.

e. This irrebuttable presumption also arises even if the conviction results from passive conduct of the parent rather than active participation in the abuse and killing as happened here under the accountability statute of the State of Illinois.

f. This is a conslusive, irrebuttable presumption because the one fact that determines fitness for caring or the parents' children is not the parents treatment of the children who are the focus of the proceeding but the deceased child who may not even be that person's own child.

g. Due process is thus denied the parent, contrary to

the dictates of the 14th Amendment of the United States Constitution since no fact may be introduced by the parent as to his treatment of the children the proceeding is concerned with. The only defense would be a denial of the conviction.

2. By singling out this one class of parent, that parent who has caused the death of a child by abuse, the State has violated those parents' right to equal protection of the law as guaranteed by the 14th Amendment to the United States Constitution.

a. The Appellate Court of Illinois agreed that parental rights are fundamental rights.

b. The strict scrutiny test should therefore be used in determining the equal protection question.

c. As such, there is no compelling state interest in applying the conclusive presumption of unfitness in this factual situation and denying the parent a hearing on the question of fitness to care for her other children.

d. The Appellate Court of Illinois incorrectly analyzed statutory presumption when it stated there were no facts in the record to support a different result. There can be no facts in the record to support the continuation of the parent's rights to her children because the application of the statute forecloses the introduction of evidence to make a record of the parent's treatment of the children nvolved in the litigation.

e. It is not pure speculation to consider that such a parent may be able to prove herself a fit parent even though so convicted. Such a result occurred in a similar case were the parent was given a hearing even though so convicted. In the Interest of Baby Boy Butt, 76 Ill. App. 3d 587, 395 N.E. 2d 1 (2d Dist.1979).

OTHER PARTIES

Freddie Agnew, natural father of Tamidj Ray and La-Tresha Agnew, as well as the "unknown father" of Gregory Ray were parties to this cause in the trial court.

OPINIONS BELOW

The Supreme Court of Illinois denied appellant's Petition for Leave to Appeal as of Right and Petition for Leave to Appeal on January 30, 1981 and is unreported. The Appellate Court of Illinois, Fifth District denied appellant's Petition for Certificate of Importance to Appeal to the Supreme Court of Illinois on October 24, 1980 and is unreported. The opinion of the Appellate Court of Illinois, Fifth District which is the subject of this opinion is reported at 88 Ill. App. 3d 1010, 411 N.E.2d 88, 44 Ill.Dec. 182 (5th Dist. 1980). The opinion of the Appellate Court of Illinois, Fifth District, is reprinted in the appendix to this petition.

JURISDICTION

This appeal is brought from the Decision of the Appellate Court of Illinois, Fifth District which sustained the constitutional validity of Chapter 40, Section 1501 (D)(f) Illinois Revised Statutes which was the sole basis for the trial court's grant of summary judgment in this cause, terminating appellant's parental rights and granting the State permission to consent to the adoption of her children.

The judgment of the Appellate Court of Illinois was rendered on September 18, 1980. No petition for rehearing was filed.

There are only three ways to take an appeal of this nature to the Supreme Court of Illinois: by Petition for Certificate of Importance filed in the Appellate Court, Chapter 110A, Section 316, Illinois Revised Statutes; by Petition for Leave to Appeal filed in the Supreme Court, Chapter 110A, Section 315, Illinois Revised Statutes; and by Petition for Leave to Appeal as a Matter of Right, filed in the Supreme Court, Chapter 110A, Section 317, Illinois Revised Statutes.

The Appellate Court of Illinois, Fifth District denied appellant's Petition for Certificate of Importance to appeal to the Illinois Supreme Court on October 24, 1980. The Illinois Supreme Court denied appellant's Petition for Leave to Appeal as a Matter of Right and Petition for Leave to Appeal on January 30, 1981. The Notice of Appeal to this Court was filed on April 29, 1981 in the Appellate Court of Illinois, Fifth District, Mt. Vernon, Illinois.

The Court's jurisdiction is invoked under 28 U.S.C. 1257 (2).

STATEMENT OF THE CASE

This cause was initiated on March 13, 1978, when the Appellee filed a Petition-Neglected Child against Pamela Ray. The children were placed in the temporary care and custody of the Illinois Department of Children and Family Services by court order on March 15, 1978.

An Amended Petition was filed on April 28, 1978, in three Counts. Only Count I was directed to Pamela Ray. The allegations against Pamela were that she "substantially neglected the children repeatedly and continuously"; that she "displayed extreme cruelty to the children"; that she "failed to protect the children from conditions within their environment injurious to the children's welfare"; that she "displayed other neglect and/or misconduct towards the children"; and that she had "a criminal conviction resulting from the death of any child by physical abuse."

The prayer for relief requested that her surviving three children, Tamidj Agnew, Gregory Ray and LaTresha Ray be adjudged wards of the court and that the Department of Children and Family Services of the State of Illinois be appointed guardian of the persons of the three children with the power to consent to adoption.

The appellee filed a Motion for Summary Judgment as to Pamela Ray on March 16, 1979, on the sole ground of her conviction in cause No. 78-CF-142 in the Circuit Court of St. Clair County, Illinois, of the murder by physical abuse of her child, Sheritta Agnew under the authority of Chapter 40, Section 1501 (D)(f), Illinois Revised Statutes. Pamela Ray's conviction resulted from her accountability, not from any active participation in any act causing the child's death.

The trial Court on May 4, 1979 granted the People's Motion for Summary Judgment as to Pamela Ray on the sole ground alleged in the Motion; conviction of the murder by physical abuse of Sheritta Agnew. No evidence was presented except Pamela Ray's indictment, Plaintiff's Exhibit 5 and the transcript of her sentencing, Plaintiff's Exhibit 4. Pamela Ray was not even present. All three surviving children were found to be neglected by reason of Pamela's conviction as to the deceased fourth child, her parental rights were terminated and the Department of Children and Family Services of the State of Illinois was granted guardianship with the power to consent to adoption. The power to consent to adoption was stayed pending appeal.

The appellant's attorney raised the objection that a grant of summary judgment would be repugnant to the appellant's constitutional rights to due process and equal protection on May 4, 1979 during the arguments on the Motion for Summary Judgment. That portion of the transcript of the proceedings is included in the appendix hereton [p.107]. The trial court overruled appellant's constitutional agruments at that time. That portion of the transcript of proceedings

is included in the appendix hereto, [p.109].

The constitutional issues were again raised in appellant's brief in the Appellate Court of Illinois, Fifth District (see copy of argument from appellant's brief in that court in appendix hereto) and was overruled by that court. (see copy of court's decision in appendix hereto)

The constitutional issues were also raised in appellant's Petition for Certificate of Importance filed in the Appellate Court of Illinois (see extract therefrom in appendix hereto) which was denied by the Appellate Court (a copy of that order is in the appendix hereto) and in appellant's Petition for Leave to Appeal as a Matter of Right, or in the Alternative, Petition for Leave to Appeal, filed in the Supreme Court of Illinois (see extract therefrom in appendix hereto) which was denied by the Illinois Supreme Court. (a copy of the letter from the Clerk of the Illinois Supreme Court is in the appendix hereto)

CONSTITUIONAL PROVISION AND STATUTES INVOLVED

Fourteenth Amendment, Section 1, United States Constitution

"....(N)or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Chapter 40, Section 1501, Illinois Revised Statutes, in pertinent part reads as follows:

"When used in this Act, unless the context otherwise requires:

. . . .

D. 'Unfit person' means any person whom the court shall find to be unfit to have a child sought to be adopted, the grounds of such unfitness being any one of the following:

. . . .

(f)....(A) criminal conviction resulting from the death of any child by physical child abuse; or a finding of physical abuse resulting from the death of any child under Section 4-8 of the Juvenile Court Act....

. . . .

Chapter 38, Section 5-1, Illinois Revised Statutes, reads as follows:

"A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself, or that of another and he is legally accountable for such conduct as provided in Section 5-2, or both.

. . . .

Chapter 38, Section 5-2, Illinois Revised Statutes, reads as follows:

"A person is legally accountable for the conduct of another when:

(a) Having a mental state described by the statute defining the offense, he causes another to perform the

conduct , and the other person in fact or by reason of legal incapacity lacks such a mental state; or

(b) The statute defining the offense makes him so accountable or

(c) Either before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense. However, a person is not so accountable, unless the statute defining the offense provides otherwise, if:

(1) He is a victim of the offense is so defined that his conduct was inevitably incident to its commission; or

(2) The offense is so defined that his conduct was inevitably incident to its commission; or

(3) Before the commission of the offense, he terminates his effort to promote or facilitate such commission, and does one of the following: wholly deprives his prior efforts of effectiveness in such commission, or gives timely warning to the proper law enforcement authorities, or otherwise makes proper effort to prevent the commission of the offense."

ARGUMENT

The questions presented should be considered by this Court because they affect a right more fundamental than any, short of life itself. Parental rights are the most basic known to humanity. When parental rights are terminated without allowing the parent an opportunity to be heard and to prevent a defense we have allowed the State to usurp a basic right without full and complete inquiry into all of the facets of the question.

It must be remembered that while this law applies to the parent who actively kills one of his own children, it applies equally to the parent who, for whatever reason, is a passive participant in one of his children's death, or in the death of a child not his own. And yet, it does not apply to the parent who kills without abuse or who kills an adult, regardless of family relationship, in even the most gruesome of circumstances.

Furthermore, the facts necessary to convict in the underlying criminal case have no direct relation to the conduct of the parent towards other children which is the true subject under inquiry.

If an uninsured individual has a right to a hearing to determine if he was at fault prior to revocation of his driver's license after being involved in a collision Bell v Burson, 402 US 535 (1971), surely such a right exists here. The fact that a driver is uninsured does not mean he was at fault. The fact that one child was abused, does not mean others will be abused. R. Helfer and C. Kempe, Child Abuse and Neglect, (1976). Further, abusing parents can respond to psychological treatment, Martin, The Abused Child, (1976).

The only argument that can be made for the irrebuttable presumption here is that, "procedure by presumption is always cheaper and easier than individualized determination." Stanley v Illinois, 405 US 645, 31 L.Ed 2d 551, 562

(1972). But here, as in Stanley, where parental rights are concerned, it must not be allowed.

Respectfully sumbitted,

George R. Ripplinger, Jr.
2215 West Main Street
Belleville, Illinois 62221
1-618-234-2440
Attorney for Appellant,
Pamela Ray

April 29, 1981.

APPENDIX

No. 79-465

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

FILED
SEP 18 1980
FIFTH DISTRICT OF ILLINOIS
CLERK APPELLATE COURT

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. PAMELA RAY, Respondent-Appellant. In the Interest of Gregory Ray, Tamidj Agnew, LaTresha Ray a/k/a LaTresha Agnew, Minors.	)	Appeal from the Circuit Court of St. Clair County Honorable C. Glenn Stevens, Judge Presiding.

Mr. JUSTICE KARNS delivered the opinion of the court:

Respondent Pamela Ray appeals from the judgment of the Circuit Court of St. Clair County terminating her parental rights to her three children, Gregory Ray, age 6, Tamidj Agnew, age 5, and Latresha Ray a/k/a Latresha Agnew, age 2. Specifically, respondent attacks the constitutionality of section 1D(f) of the Adoption Act (Ill. Rev. Stat. 1979, Ch. 40, par. 1501D(f)), insofar as it provides that "* * * a criminal conviction resulting from the death of any child by physical abuse * * *" constitutes a ground for a finding of parental unfitness.

The Department of Children and Family Services filed a petition in the trial court alleging that the children were neglected and the respondent was an unfit parent, and requesting that the children be adjudicated wards of the court, that the respondent be adjudicated unfit and her parental rights terminated, and that a guardian be appointed with power to consent to adoption. Subsequently, the respondent was

convicted of murder and cruelty to children and sentenced to concurrent terms of 20 and 2 years. The victim was respondent's daughter, Sheritta Agnew, who was 17 months of age at the time of her death. We affirmed the respondent's conviction, and the supreme court denied leave to appea People v. Ray (5th Dist. 1979), 80 Ill. App. 3d 151, 399 N.E.2d 977, leave to appeal denied (May 29, 1980).

Following defendant's conviction, the State filed a motion for summary judgment in the instant proceeding alleging that no material issue of fact existed concerning the respondent's unfitness under section 1D(f) of the Adoption Act, and requesting that the respondent be found unfit and her parental rights terminated. Subsequently, the court granted this motion. Also, in proceedings not challenged here, the court found the children neglected as alleged in the petition, adjudicated them wards of the court, and entered guardianship orders.

Respondent contends that the statute violates equal protection and due process. The State asserts that the applicable equal protectior standard is whether the statutory classification is rationally related to a legitimate governmental purpose, rather than the "strict scrutiny" analysis of whether the classification is necessary to promote a compelling governmental interest. The respondent apparently concedes that the rational relationship test applies, for in her brief it is said that the "determining question" is whether "* * * the classification is reasonable in light of its purpose * * *."

The parties have not cited nor are we aware of any case in which our own supreme court or the United States Supreme Court has squarely decided the appropriate test for an equal protection challenge to a statutory ground for a finding of parental unfitness. However, in Regenold v. Baby Fold, Inc. (1977), 68 Ill. 2d 419, 369 N.E.2d 858, appeal dismissed (1978)

35 U.S. 963, 98 S.Ct. 1598, 56 L.Ed.2d 54, our supreme court did review a mother's claim that her consent to adoption was procured by fraud and duress and her constitutional attack on the law concerning termination of parental rights by consensual adoption. In considering the constitutionality of the legislative restriction on revocability of parental consent, the court balanced the state's parens patriae authority to legislate for the protection of children against the right to maintain parental ties with one's natural child. The court quoted the test stated in Meyer v. Nebraska (1923), 262 U.S. 390, 399-400, 43 S.Ct. 625, 627, 67 L.Ed. 1042, 1045, that parental rights "* * * may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect." (68 Ill. 2d at 438, 369 N.E.2d at 866.) The court then applied this test, holding that the legislative restriction on the revocability of consent to adoption was reasonably related to the State's authority to legislate with regard to the adoption of children and for their general welfare.

Although Regenold involved consensual adoption, it constitutes some authority for the application of the rational relationship test here, where legislation for the termination of parental rights and protection of children is again called into question. However, the application of "strict scrutiny" would appear to be supported by a recent decision of this court. (Helvey v. Rednour (Docket No. 79-145, 5th Dist., filed July 7, 1980) ___ Ill. App. 3d ___, ___ N.E.2d ___.) The issue in Helvey v. Rednour was the constitutionality of a provision of the Adoption Act allowing nonconsensual termination of parental rights, without a judicial determination of parental unfitness, based on a finding that the parents were mentally retarded and would remain so for the forseeable future. (Ill. Rev.

Stat. 1979, Ch. 40, par. 1510(e).) We cited Meyer v. Nebraska and other more recent Supreme Court cases concerning contraceptives (Griswold v. Connecticut (1965), 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510; Carey v. Population Services International (1977), 431 U.S. 678, 97 S.Ct. 2010, 52 L.Ed.2d 675), abortion (Roe v. Wade (1973), 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147), and interstate travel (Memorial Hospital v. Maricopa County (1974), 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306) to support the conclusion that parental rights are "fundamental" and may not be terminated by State law unless the law advances a compelling state interest. The compelling nature of the State interest in protecting the welfare of a child was duly noted. However, it was reasoned that not every retarded parent could be found unfit under grounds enumerated in section 1D of the Adoption Act, and that retarded parents, like others, were entitled to a judicial determination of their fitness prior to termination of their parental rights.

This last conclusion is certainly correct, and it might appropriately have been reached by simply holding that termination of parental rights based on a mere finding of mental retardation would be arbitrary and irrational under the traditional equal protection test. As in Helvey, the various generalized pronouncements of the Supreme Court relating to parental rights have been interpreted to establish the fundamental nature of those rights in the context of a substantive due process analysis of Iowa parental rights' termination statutes. (Alsager v. District Court of Polk County, Iowa (S.D. Ia. 1975) 406 F. Supp. 10, affirmed (8th Cir. 1976), 545 F.2d 1137.) No doubt, the pronouncements of the Supreme Court are entitled to careful consideration, perhaps even when their relevance to the issue at hand is rather oblique at best. Nevertheless, without clear

uthority, we do not feel compelled to depart from the conventional nalysis of whether legislation is arbitrary and irrational.

The respondent acknowledges the State's legitimate interest n protecting children who cannot protect themselves. She nonethe- ess argues that a parent who abuses and kills one child will ot automatically mistreat her other children and that the causes of abuse can be treated and eliminated.

Laws of other states making child abuse a ground for termination of parental rights have been upheld against constitutional attack and applied to terminate rights to more than one child based on a finding of abuse of a single child. (Annot., 53 A.L.R.3d 605 (1973).) In Illinois, a finding of parental unfitness on the ground of "depravity and termination of parental rights to a son and two daughters was affirmed solely upon evidence that the parents had sold one of the daughters into marriage. (In Interest of Flynn (3d Dist. 1974), 22 Ill App. 3d 994, 318 N.E.2d 105.) In the context of neglect proceedings based on child abuse, it has been held that all the children of abusing parents may be found neglected even though all have not yet been abused. (In Interest of Brooks (1st Dist. 1978), 63 Ill. App. 3d 828, 379 N.E.2d 872); although, a neglect finding in a similar case was reversed based on affirmative evidence of the mother's care and concern for the unabused child. In Interest of Baby Boy Butt (2d Dist. 1979), 75 Ill. App. 3d 587, 395 N.E.2d 1.

We have affirmed the respondent's conviction of murder and cruelty to children on evidence of common design and participation in her boyfriend's course of torture and abuse that resulted in the death of her child. (People v. Ray.) The conflict inherent in parental fitness legislation between the State's interest in

the burden of proving and did prove the respondent's unfitness on a grou we have held proper. As argued by the State, the "irrebuttable presumption" challenged by the respondent is nothing more than the relation between a fact and its legal result. In light of the undisputed facts that the defendant had a criminal conviction resulting from the death of any child by physical child abuse, the court correctly determined that there was no material issue of fact and granted summary judgment finding her unfit and terminating her parental rights.

The judgment of the Circuit Court of St. Clair County is affirmed.

AFFIRMED.

CONCUR: JONES, P.J., SPOMER, J.

No. 79-465

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, vs. PAMELA RAY, Respondent-Appellant. In the Interest of Gregory Ray, Tamidj Agnew, LaTresha Ray a/k/a LaTresha Agnew, Minors.	Appeal from the Circuit Court of St. Clair County. No. 78-J-146

Per Curiam:

ORDER

This cause coming to be heard on appellant's petition for certificate of importance, and the Court being advised in the premises;

IT IS ORDERED that appellant's petition be, and it hereby is, DENIED.

Harrison and Kasserman, JJ., not participating.

54147

ILLINOIS SUPREME COURT
CLELL L. WOODS, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

January 30, 1981

Mr. George R. Ripplinger, Jr.
Attorney at Law
2215 West Main Street
Belleville, IL 62221

No. 54147 - People State of Illinois, respondent, vs. Pamela Ray, petitioner. Leave to appeal, Appellate Court, Fifth District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

Clell L. Woods

Clerk of the Supreme Court

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
vs.) NO. 78-J-146
)
PAMELA RAY, Respondent,)
)
In the Interest of Minors:)
)
GREGORY RAY, TAMIDJ AGNEW,)
LATRESHA RAY a/k/a LATRESHA AGNEW)

FILED
MAY 9 - 1979
CIRCUIT CLERK

ORDER

This cause coming on to be heard this 4th Day of May, 1979, before the Honorable C. Glenn Stevens, Associate Judge for the Twentieth Judicial Circuit upon the State's Motion for Summary Judgement, the Court hereby finds:

1. That present in open Court this 4th day of May, 1979, are: The People of the State of Illinois, respresented by Assistant State's Attorneys Elaine Lipe and Judy Cates; K. Douglas Hamman, Attorney for the Respondent, Pamela Ray; Jack Giannini, Guardian Ad Litem and Attorney for the minors, Gregory Ray, Tamidj Agnew and Latresha Ray a/k/a Latresha Agnew;

2. That without objection the minors are not present in open Court;

3. The Respondent, Pamela Ray, is not present in open Court;

4. That present in addition to the above-named parties are Pearlie Ray, represented by her Attorneys William Lambert and Richard Hudlin;

5. That the Court, having reviewed the file and exhibits, considered the testimony adduced, having heard arguments of counsel, examined the authorities cited and being fully advised in the premises;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Upon oral motion of the State to amend by interlineation Count I, Paragraph 12 of the Amended Petition, the Court hereby

x

grants said motion and by interlineation allows Paragraph 12 of Count I of the Amended Petition to include the following allegation: "That Pamela Ray has a criminal conviction resulting from the death of any child by physical/abuse;" child

2. Upon oral motion of the State to default Unknown Father of Gregory Ray, the Court hereby finds that there has been adequate publication and that the Unknown Father of Gregory Ray is not present this date. It is therefore ordered that Unknown Father of Gregory Ray is hereby found unfit and that the said minor is found to be neglected for the reasons set forth in Count III of the Amended Petition, and that all parental rights are from this date forward terminated; and that further, Paragraphs (a) and (b) of the Prayer for Relief in Count III are hereby granted, to wit:

a. That without objection it is in the best interest of the minor, Gregory Ray, to be made a ward of this Court and said minor is hereby made a ward of this Court;

b. That Guardianship of the minor, Gregory Ray, is hereby granted to Richard S. Laymon, Guardianship Administrator, Department of Children and Family Services, or his successor in office with the power and consent for adoption of said minor;

3. Pearlie Ray, having filed in the above-styled proceeding a Supplemental Petition To Modify, a Motion To Stay these proceedings (78-J-146) and a Motion for Continuance, the Court hereby finds and orders that one Pearlie Ray is not a party in 78-J-146 and consequently said Supplemental Petition To Modify and said Motion for Continuance are denied;

4. The Court, next having heard arguments and testimony on the Motion To Stay Proceedings filed by one Pearlie Ray hereby denies said motion;

5. Upon oral motion of the State for a Rule to Show Cause why William Lambert should not be held in contempt of Court, said motion is hereby denied;

6. Upon oral motion of K. Douglas Hamman to continue these proceedings, the Court, having heard arguments thereon, hereby denies said Motion for Continuance;

7. The State's oral motion to exclude all non-parties to the above-styled proceeding is hereby granted;

8. Upon motion of the State for Summary Judgment, the Court, having received Certified Copies of Pamela Ray's convictions for Murder and Cruelty to Children, and having heard further arguments of counsel, hereby finds and orders:

a. Respondent, Pamela Ray, was convicted of the crimes of Murder and Cruelty to Children by the Honorable John J. Hoban, Circuit Judge for the Twentieth Judicial Circuit, St. Clair County, Illinois, on July 6, 1978, in cause no. 78-CF-142;

b. Respondent, Pamela Ray, was sentenced to a term of 20 years for Murder on August 25, 1978, by the Honorable John J. Hoban and was sentenced to a term of 2 years for Cruelty to Children on August 29, 1978, by the Honorable John J. Hoban in cause no. 78-CF-142;

c. That there is no genuine issue as to any material fact and that the State is entitled to a judgment as a matter of law;

d. Respondent, Pamela Ray, mother of Gregory Ray, Tamidj Agnew and Latresha Ray a/k/a Latresha Agnew is consequently found unfit in that she has criminal convictions resulting from the death of any child by physical/abuse, as reflected by the afore-mentioned Certified Copies from cause no. 78-CF-142;

e. That Count I of the Amended Petition in the above-styled cause is hereby granted, to wit:

1.) The minors, Tamidj Agnew, Latresha Ray a/k/a Latresha Agnew and Gregory Ray are hereby found to be neglected;

2.) The parental rights of Pamela Ray with regard to said minors are hereby terminated;

3.) That without objection by any party it is in the best interests of said minors that they be and they are hereby made wards of this Court;

4.) The Court file reflects that on July 18, 1978, Fred Agnew, in open Court before the Honorable D. W. Costello, stipulated to a finding of neglect of his minor children, Tamidj Agnew and Latresha Ray a/k/a Latresha Agnew, to wardship of them by this Court and that Guardianship of his minor children be granted to Richard S. Laymon, Guardianship Administrator, Department of Children and Family Services, or his successor in office without the power and consent for adoption;

5.) Because of said Court order filed July 18, 1978, the Court hereby orders that Guardianship of the minors, Tamidj Agnew and Latresha Ray a/k/a Latresha Agnew, is hereby continued in Richard S. Laymon, Guardianship Administrator, Department of Children and Family Services or his successor in office without the power and consent for adoption of said minor;

6.) That Guardianship of the minor, Gregory Ray, is hereby granted to Richard S. Laymon, Guardianship Administrator, Department of Children and Family Services, or his successor in office with the power and consent for adoption of Gregory Ray; But, that the afore-mentioned power and consent for adoption of Gregory Ray is hereby stayed pending the outcome of appeals from this cause and the criminal convictions of Pamela Ray in cause no. 78-CF-142.

C. Glenn Stevens

PRESIDING JUDGE
HONORABLE C. GLENN STEVENS

DATED: May 9, 1979

No. 79-465

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee,	)
vs.	)
PAMELA RAY, Respondent-Appellant	)
In the Interest of Gregory Ray, Tamidj Agnew, LaTresha Ray a/k/a LaTresha Agnew, Minors.	)

NOTICE OF APPEAL

The respondent, Pamela Ray, hereby appeals to the Supreme Court of the United States from the judgment entered in this case by the Appellate Court of Illinois, Fifth District, on September 18, 1980.

This appeal is taken pursuant to 28 U.S.C. 1257 (2).

George R. Ripplinger, Jr.
2215 West Main Street
Belleville, Illinois 62221
1-618-234-2440
Attorney for Respondent-
Appellant, Pamela Ray

No. 79-465

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee,	)
vs.	)
PAMELA RAY, Respondent-Appellant	)
In the Interest of Gregory Ray, Tamidj Agnew, LaTresha Ray a/k/a LaTresha Agnew, Minors.	)

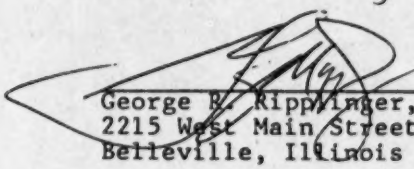
PROOF OF SERVICE

The undersigned, a member of the Bar of the Supreme Court of the United States, after first being sworn upon his oath, deposes and says, that to his knowledge, a copy of the Notice of Appeal was served upon Martin N. Ashley, Deputy Director, State's Attorneys Appellate Service Commission, 1907 Broadway, Mt. Vernon, Illinois 62864, John Baricevic, State's Attorney, St. Clair County Building, 10 Public Square, Belleville, Illinois 62220, Walter T. Simmons, Clerk of the Appellate Court of Illinois, Fifth District, Appellate Court Building, Mt. Vernon, Illinois, 62864 and Barney Metz, Clerk of the Circuit Clerk, 20th Judicial Circuit, St. Clair County, St. Clair County Building, 10 Public Square, Belleville, Illinois 62220, by enclosing the same in an envelope properly addressed as above, with first-class postage fully prepaid, and by depositing said envelopes in the U. S. Post Office mail box in Belleville, Illinois on the 29th day of April, 1981.

George R. Rippinger, Jr.

Subscribed and sworn to before me this 29th day of April, 1980.

Mary McKa.
Notary Public



George R. Ripplinger, Jr.
2215 West Main Street
Belleville, Illinois 62221

Attorney for Appellant
Pamela Ray

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

FILED
MAR 16 1979
CIRCUIT CLERK

PEOPLE OF THE STATE OF ILLINOIS)
)
Plaintiff,)
)
-vs-) NO. 78-J-146
)
TAMIDJ AGNEW, GREGORY RAY,)
LATRESHA RAY)
Minors.)

MOTION FOR SUMMARY JUDGEMENT

Now comes Clyde L. Kuehn, State's Attorney by and for the people of the State of Illinois and pursuant to Section 57 of the Civil Practice Act, prays this court render a Summary Judgement in their favor on the above entitled cause as amended. In support of said motion petitioner states:

1. That on April 21, 1978, a petition was filed by Al Schebera on behalf of the Department of Children and Family Services, alleging in part that Gregory Ray, Tamidj Agnew, and LaTresha Agnew were neglected minors and that Pamela Ray is an unfit parent in accordance with Section 5-9 of the Juvenile Court Act incorporating the Adoption Act.

2. That said petition prays that Pamela Ray be adjudicated unfit and that all parental rights be terminated.

3. That on February 14, 1979, the Honorable Milton Wharton ordered the Department of Children and Family Services of the State of Illinois to continue as guardian of all three minors. Custody of Tamidj Ray AKA Tamidj Agnew and LaTresha Ray AKA LaTresha Agnew was granted to their natural father, Fred Agnew.

4. That Gregory Ray is presently in the custody of Richard S. Seymon, Guardianship Administrator of the Department of Children and Family Services of the State of Illinois.

5. That on June 6, 1978, as the result of the March 12, 1978, beating, beating, death of the minor, Sheritta Agnew, Pamela Ray was convicted of Murder and Cruelty to Children.

6. That Illinois Revised Statutes 1977, Chapter 4, Section 9.1-1D F provides that the grounds of unfitness to have a child include: ".... a criminal conviction resulting from the death of any child by physical child abuse;...."

7. That no genuine issue of material fact exists.

In support of said motion, a certified copy of conviction and certified copies of the amended indictment in criminal cause 78-CF-142 have been attached hereto and made a part hereof.

WHEREFORE, petitioner prays this Honorable Court render a Summary Judgement on the above entitled cause finding that Pamela Ray has neglected Gregory Ray, Tamidj Agnew, and LaTresha Agnew and that Pamela Ray is unfit to have a child as defined in Illinois Revised Statutes 1977, Chapter 4, Section 9.1-1D. Furthermore, petitioner prays this court terminate Pamela Ray's parental rights relating to all three children and grant Richard S. Laymon guardianship with the power to consent to adoption of Gregory Ray.

DAVID Y. EBERSPACHER
Assistant State's Attorney

COPY CERTIFICATE

STATE OF ILLINOIS,)
) ss.
St. Clair County)

I, GEORGE H. RANSOM, Clerk of the Circuit Court, in and for said County of St. Clair, and State of Illinois, do certify the foregoing to be a true and correct copy of The Amended Bill of Indictment & Motions & Sentencing entitled the People of the State Of Illinois Vs Norvelle Hicks and Pamela Ray

as fully as the same remain on file and appear of record in my office in Belleville, Illinois, ____ book ____ Page ____ of said St. Clair County records. And I further certify that I am the custodian of said Records.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affix the seal of said Court, at office in Belleville, Illinois, this 16th day of March A. D. 19 77

GEORGE H. RANSOM, Circuit Clerk

By _____ Deputy

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS

-vs-

NORVELLE HICKS AND PAMELA RAY
Defendant

No. 78CF142

AMENDED BILL OF INDICTMENT COUNT I

The Grand Jury of St. Clair County charges:
That on / or about the 12th day of MARCH, 19 78, in said County NORVELLE HICKS AND PAMELA RAY

committed the offense of MURDER

in that THEY, WITHOUT LAWFUL JUSTIFICATION, KILLED ANOTHER INDIVIDUAL, TO-WIT: SHERITTA AGNEW, BY INFLICTING UPON HER OR CAUSING TO BE INFLICTED ON HER INJURIES WHICH CAUSED HER DEATH ON THE 12th DAY OF MARCH, 1978, BY STRIKING AND BEATING HER, THE SAME BEING DONE WITH THEIR FISTS, AND/OR FEET, AND/OR BELTS AND EXTENSION CORDS, AND/OR AN INSTRUMENT OR INSTRUMENTS UNKNOWN TO THE GRAND JURY, AND BY BURNING SHERITTA AGNEW ABOUT HER BODY BY PLACING SHERITTA AGNEW IN A TUB OF SCALDING HOT WATER, AND/OR BURNING HER ABOUT HER BODY WITH A CIGARETTE AND/OR BURNING HER ABOUT HER BODY WITH AN INSTRUMENT OR INSTRUMENTS UNKNOWN TO THE GRAND JURY, AND WHEN IN THE PERFORMANCE OF SAID ACTS WHICH CAUSED THE DEATH OF SAID SHERITTA AGNEW THEY (1) EITHER INTENDED TO KILL OR DO GREAT BODILY HARM TO THE SAID SHERITTA AGNEW, OR KNEW THAT THEIR SAID ACTS WOULD CAUSE DEATH TO SAID SHERITTA AGNEW, OR (2) THEY KNEW THAT THEIR SAID ACTS CREATED A STRONG PROBABILITY OF DEATH OR GREAT BODILY HARM TO SAID SHERITTA AGNEW, OR (3) THEY WERE ATTEMPTING TO COMMIT OR WERE COMMITTING A FORCIBLE FELONY UPON SAID

~~in violation of Paragraph Chapter Illinois Revised Statutes~~

FILED
MAY 1 1978

Bond $ No Bail

Witness:

COUNT I

[illegible]

committed the offense of

in that

SHERITTA AGNEW TO-WIT, AGGRAVATED BATTERY, IN VIOLATION OF THE ILLINOIS CRIMINAL CODE OF 1961 AS AMENDED, SECTION 12-4(a), IN THAT THEY, IN COMMITTING A BATTERY, INTENTIONALLY OR KNOWINGLY CAUSED GREAT BODILY HARM TO SAID SHERITTA AGNEW OR (4) THEY WERE ATTEMPTING TO COMMIT OR WERE COMMITTING A FORCIBLE FELONY UPON SAID SHERITTA AGNEW TO-WIT, CRUELTY TO CHILDREN, IN VIOLATION OF ILLINOIS REVISED STATUTES, CHAPTER 23, SECTION 2368, IN THAT THEY, WILFULLY AND UNNECESSARILY INJURED THE HEALTH OF SHERITTA AGNEW, A CHILD UNDER THE AGE OF 17 YEARS OF AGE AND UNDER THEIR LEGAL CUSTODY AND CONTROL, IN THAT THEY STRUCK AND BEAT HER, THE SAME BEING DONE WITH THEIR FISTS, AND/OR FEET, AND/OR BELTS AND EXTENSION CORDS, AND/OR AN INSTRUMENT OR INSTRUMENTS UNKNOWN TO THE GRAND JURY,

in violation of Paragraph 9-1a Chapter 38, Illinois Revised Statutes.

A TRUE BILL

Bond $ No Bail

Jack Testa
Foreman

WITNESS: DET. BREWER

COUNT II

That on/or about the 12th day of MARCH, 19 78, in said County PAMELA RAY

committed the offense of CRUELTY TO CHILDREN

in that THE SAID DEFENDANT, BIENG THE MOTHER OF SHERITTA AGNEW, A CHILD UNDER 17 YEARS OF AGE AND UNDER HER LEGAL CUSTODY, WILFULLY AND UNNECESSARILY INJURED THE HEALTH OF SHERITTA AGNEW IN THAT SHE STRUCK SHERITTA AGNEW NUMEROUS TIMES ABOUT HER BODY WITH HER FISTS, AND/OR FEET, AND/OR BELTS AND EXTENSION CORDS, AND/OR AN INSTRUMENT OR INSTRUMENTS UNKNOWN TO THE GRAND JURY AND ALLOWED SHERITTA AGNEW TO BE BURNED BY MEANS OF A CIGARETTE IN HER PRESENCE AND IN THAT SHE ALLOWED SAID CHILD IN HER PRESENCE TO BE PLACED IN SCALDING WATER RESULTING IN BURNS ABOUT THE BODY AND THAT SHE ALLOWED SAID CHILD IN HER PRESENCE TO BE STRUCK NUMEROUS TIMES ABOUT THE HEAD AND BODY RESULTING IN NUMEROUS BRUISES, CONTUSIONS AND ABRASIONS OF THE TRUNK AND EXTREMITIES OF SAID CHILD,

in violation of Paragraph 23 Chapter 2368, Illinois Revised Statutes.

COUNT III

That on or about the 12th day of MAY, 19 78, in said County PAMELA RAY

committed the offense of CRUELTY TO CHILDREN

in that THE SAID DEFENDANT, BEING THE MOTHER OF TAMIDJ AGNEW, A CHILD UNDER 17 YEARS OF AGE AND UNDER LEGAL CUSTODY, WILFULLY AND UNNECESSARILY INJURED THE HEALTH OF TAMIDJ AGNEW, IN THAT SHE WHIPPED TAMIDJ AGNEW ABOUT THE LEGS WITH A BELT CAUSING LACERATIONS ON THE SAID CHILD'S LEGS,

in violation of Paragraph 23 Chapter 2368, Illinois Revised Statutes.

A TRUE BILL

Bond $ ____.

Jack Tuttle

Foreman

WITNESS: DKT DREWER

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
ST. CLAIR COUNTY

PEOPLE OF THE STATE OF ILLINOIS,)
)
v.) No. 78-CF-142
)
PAMELA RAY,) Charge: Murder
) Cruelty to Children
Defendant.)

POST TRIAL MOTIONS & SENTENCING

Come the People of the State of Illinois by Mr. John Mohan, Assistant State's Attorney; comes also the defendant, in person, in open court, and with her attorney, Mr. Thomas LeChien, Assistant Public Defender.

And now upon a finding of guilty by the Court in a Bench Trial, the Defendant comes before the Court for sentencing. Post-trial motions denied.
Based upon consideration of the pre-sentencing report, facts in evidence, statements by both attorneys, and the defendant having been given an opportunity to make a statment, the Court sentences the defendant on Count I the charge of Murder into the custody of the Department of Criminal Corrections for a period of twenty years for placement in an institution of their choosing until otherwise discharged by virtue of law. Defendant is not sentenced on Count II as is it a lesser included offense. Judgment entered on Court I. Mittimus to issue.

Defendant admonished as to his rights of appeal.

DATED: August 25, 1978

HON. JOHN J. MOHAN

Debra M. Erwin, CSR

cc: Probation office
St. Clair County Jail

FILED
AUG 25 1978
CIRCUIT CLERK

IN THE CIRUCIT COURT
TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
ST. CLAIR COUNTY

In the Interest of GREGORY RAY, a minor — No. 78-J-146

Before the HON. C. Glenn Stevens, Associate Judge

TRANSCRIPT OF HEARING

May 4, 1979

APPEARANCES:

MS. JUDY CATES, Assistant State's Attorney
Appeared on Behalf of the People

MS. ELAINE LIPE, Assistant State's Attorney
Appeared on Behalf of the People

MR. RICHARD HUDLIN, Attorney at Law
Appeared on Behalf of Pearlie Ray

MR. WILLIAM LAMBERT, Attorney at Law
Appeared on Behalf of Pearlie Ray

(cont.)

here I think have no part but as to the State's motion for summary judgment, Pamela Ray, the respondent in this case, would object to that motion and cite to the Court the case of Stanley vs. Illinois, 405 US 645 31 Lawyers Addition, 2d 551. The Supreme Court of the United States held an Illinois Statute dealing with an irrebuttable presumption that the father of illegitimate children is presumed to be unfit and I feel that we are dealing here with a particular person is placed in a class, in this case Pamela Ray, because of a criminal conviction. That is, as Ms. Cates pointed out, on appeal. It is because of that, "Irrebuttably presumed to be unfit," and therefore because of the unfitness and the petition that has been filed by the Department of Children and Family Services that her parental rights, because of that, should be terminated. I feel that the Supreme Court has made it clear as to the importance of a family setting and also the Juvenile Act makes that as one of its aims, that at all costs the family setting should be maintained unless a circumstance exist which make it--which compel that the family be sought broken up. I feel that Miss Ray is deserving of a hearing as to her fitness. I feel that's a violation of her constitutional rights; due process; equal protection; and should she be summarily adjudged unfit it would be violate of those particular rights. That's all I

exist here. The Stanley case in the Supreme Court citation was 92 Supreme Court 1208. It reversed the Supreme Court of Illinois in a 1970 case in re Stanley 45 Ill 2d 132 256 NE 2d 814. Based upon the legal arguments presented here the Court's ruling is that Clyde L. Kuehn, State's Attorney, motion for summary judgment, file marked March 16, 1979 should be granted. Again the Court, since it doesn't have a written opinion here has made its ruling from the bench would point out that the Illinois Revised Statute volumes put out by the Illinois State Bar Association as opposed to the Smith Heard Anitated would refer to that unfitness section with the words, "A criminal conviction; physical child abuse," etc., they are in Chapter 40 Section 1501-1D, like dog. The prayer in the State's Attorney's motion asked that a summary judgment be rendered on the above entitled cause 78-J-146, finding that Pamela Ray has neglected Gregory Ray, Tamidj Agnew, and Latrecia Agnew and the Court so finds and grants that portion of the judgment based on the legal arguments presented here. It also requests--the prayer in the summary judgment also requests that Pamela Ray be adjudged unfit as defined in the statute that I previously alluded to in Smith Heard Anitated it is Chapter 4 Section 9.1D and I believe it is subparagraph i. Then in the prayer the State's Attorney prays that the Court termi-

nate Pamela Ray's parental right relating to all three children and the Court hereby does so terminate--strike, 'and the Court hereby does so terminate." The Court, in ruling upon the unfitness of Pamela Ray--do you have a remark Ms. Cates?

MS. CATES: I was going to request that the Court make a specific finding as to unfitness.

THE COURT: Well, it already has made a specific finding of unfitness, it has granted the relief that Pamela Ray is unfit to have a child as defined in that particular statute. Since unfitness has been found regarding those children, and it, the statute as Mr. Bowman has characterized it, it is a summary type statute. The Court believes it is certainly in the best interest of these minors that they be made wards of this Court. As to Pamela Ray, regarding any termination of her parental rights, those minors are hereby made wards of the Court. Pamela Ray's parental rights relating to all three children, as prayed in the motion, are hereby terminated and the motion simply asks one additional bit of relief and that is that the Court grant, and the Court is going to do so, so the Court will phrase it this way: Guardianship is hereby granted to the Department of Children and Family Services, Richard S. Layton, Guardianship Administrator or his successor in office of Gregory

ARGUMENT

I. The issue is whether Chapter 40, Sec. 1501 D (f) Illinois Revised Statutes is unconstitutional.

"Procedure by presumption is always cheaper and easier than individualized determination." Stanley v. Illinois, 405 US 645, 31 L. Ed. 2d 551, 562 (1972). The procedure utilized in this case is an example of this maxim.

Pamela Ray, mother of four children was charged with the murder by physical child abuse of one of her children, Sheritta Agnew. Pl. Ex. 5. She was convicted of and sentenced on that charge. Pl. Ex. 4.

The State then began proceedings to declare her unfit as a parent and terminate her parental rights as to the other three children: Gregory Ray, LaTresha Ray and Tamidj Agnew. R.1.

This was accomplished on May 9, 1979 when the trial judge granted the State's motion for Summary Judgment terminating her parental rights in these three children and granting guardianship to the Department of Children and Family Services with the power to consent to adoption. R. 141-143. Pamela Ray was not present at the hearing, R. 141, nor was any evidence offered except certified copies of the indictment and sentancing for the murder of Sheritta Agnew. The State relied upon and the Judge's ruling was based upon Ch. 40, Sec. 1501 D (f) Ill. Rev. Stat. which declares any parent convicted of such an offense to be unfit as a parent as

o all of their children.

Our first inquiry must be, does this statute create classification which can pass the standards of the equal rotection clause of the 14th Amendment to the United States onstitution and Art. 1, Sec. 2 of the Illinois Constitution.

Admittedly, not every classification is a deprivation equal protection. But, the fact that there exists a stinct class of parents and the statute treats them all ually does not end our inquiry. Is the classification asonable in light of its purpose must be the determining estion. Carrington v. Rash, 380 US 89, 92-93 (1965).

Undeniably, Pamela Ray has been found guilty of abusing r deceased child. There is, therefore, no question regarding r continuing fitness to care for that child. But what her other children? Does it automatically follow that e will mistreat them? No evidence exists in the record garding her treatment of these other three children.

Studies have shown that it is not uncommon for one ild in a family to be abused while the others are well red for. For example, R. Helfer and C. Kempe Child Abuse d Neglect, (1976). Furthermore, many other studies show at the abusing parent can be treated socially and ychologically and may never abuse their children again. r example, Martin, The Abused Child, (1976).

The major reasons for child abuse have been identified many studies. Many times the parent is immature and pendant. They are socially isolated and have poor lf-esteem. They usually have difficulty in seeking or

obtaining pleasure. Oft times they have disorted perceptions of the child, feeling that the child should be providing love and attention to them when, in fact, young children need more than they are able to give. It is not uncommon in these situations to actually see a form of role reversal where the parent seeks to receive a parent-like reaction and reinforcement from the child. Fear of spoiling the child and a strong belief in punishment are also common. Finally, an impaired ability to empathize with the child's needs and to respond appropriately lead to much abuse, for example, not understanding the many reasons why a child might cry or behave poorly; many times only acting out a need for attention or, more basic, hunger. Most abusers come from low income, poorly educated urban families. Fifty-five percent have not completed high school. Forty-eight per cent of the fathers are unemployed. In twenty-nine percent of the cases there is no man regularly in the home. The Abused Child, above.

As can be seen, many of the factors leading to child abuse are situational or enviromental and are capable of being changed. Furthermore, through treatment, education and counseling, most of the rest could be removed as a causitive factor.

What about Pamela Ray? There are few facts in the record. We do know that she was young, only seventeen. We know that she was not proved to have done anything to the child herself. It was done by a boyfriend, Norvelle

xxx

Hicks, who was indicted with her. Pl. Ex. 4.

There are three other children and no criminal acts were charged regarding their care. Nor does the record establish abuse of the other children by their mother.

But Pamela Ray is not the only parent involved here. This statute treats all the same. She was sentenced to a jail term. There could conceivably be one who would receive probation due to the particular facts of the case. Yet all are treated the same. Clearly this statute is violative of the Equal Probation Clause of the Fourteenth Amendment to the United States Constitution and Art. 1, Sec. 2 of the Illinois Constitution. Parents at least deserve the right to a hearing during which they may present their side of the situation and propose a reasonable alternative to losing their children.

". . . (T)he very nature of due process negates any concept of inflexible proceedures universably applicable to every imaginable situation. . . (W)hat proceedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as the private interest that has been affected by governmental action." Cafeteria Workers v. McElroy, 367 US 886, 895 (1961).

The governmental interest here is in protecting its young citizens who cannot protect themselves. This is a laudible and important purpose. And yet, is the only answer to wrest the child from its home? Surely that is not the only answer. Removing criminals from society temporarily by imprisonment does not always provide a permanent cure. Would it not be better in some cases to leave the child

in the home or temporarily remove the child and work to re-establish the home environment?

To paraphrase Justice Frankfurter's concurring opinion in Kovacs v. Cooper, 336 US 77, 95 (1949),

"The private interest here, that of a (parent) in the children he has (birthed) and raised, undeniably warrents deference. It is plain that the interest of a parent in the companionship, care, custody, and managment of his children come(s) to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements."

The Courts have frequently held that irrebutable presumptions are invalid in cases of lesser importance than breaking family ties. In Bell v. Burson, 402 US 535, (1971) the Court held that an uninsured motorist was entitled to a hearing as to fault before his driver's license could be revoked where he failed to post security for damage in an automobile accident.

The Court has held that the mere occurrance of an automobile-train collision at a grade crossing cannot be conclusively presumed to result from the railroad's negligence. Western & A.R.R. v. Henderson, 279 US 639 (1929).

An irrebutable presumption that gifts within two years of death are in contemplation of death for estate tax purposes was struck down in Heiner v. Donnan, 285 US 312 (1932) as violative of due process.

"State legislation declaring that proof of one fact or a group of facts shall constitute prima facie evidence of the main or ultimate fact in issue is valid if there is a rational connection between what is proved and what is to be inferred. If the presumption is not unreasonable and is not made conclusive of the rights of the person against

whom raised, it does not constitute a denial of due process of law (citations omitted). A prima facie presumption casts upon the person against whom it is applied the duty of going forward with his evidence on the particular point to which the presumption violates. A statute creating a presumption that is arbitrary as that operates to deny a fair opportunity to repel it violates the due process clause of the Fourteenth Amendment." Manley v. Georgia, 279 US 1, 49 S. Ct. 215, 217 (1929).

This was the ruling of the Court regarding a Georgia statute to the effect that every insolvency of a bank should be deemed conclusively criminally fraudulant as to that bank's president and directors.

Surely the interest of parents in their children are higher and more worthy of protection than the foregoing. Yet, Ch. 40, Sec. 1501 D (f) Ill. Rev. Stat. has that same effect. A parent is not entitled to introduce any evidence to rebut this presumption. Admittedly it may establish a prima facie case, but a hearing must be afforded the parent to comply with the requirements of the due process clause of the 14th Amendment to the United States Constitution and Art. 1, Sec. 2 of the Illinois Constitution.

II. The issue is whether the decision of the trial court is against the manifest weight of the evidence.

No evidence was presented as to Pamela Ray's treatment of her surviving children. The order of the trial court pertained only to these surviving children. The only issue ruled upon was her conviction relating to a deceased child. R 141-143, Pl. Ex. 4, Pl. Ex. 5.

The decision in In the Interest of Baby Boy Butt, 76 Ill. App. 3d 587, 395 N.E. 2d 1 (2d Dist., 1979) is illustrative of the possible situation in cases of this nature. There the evidence was that the mother was convicted of manslaughter of one child and the evidence showed good treatment of another child. Butt, at 57-59. The court there held that the parents guilt or innocence in the manslaughter case was irrelevant as to the surviving children. Butt, at 56. The court then went on to say that since there was no evidence to support the charge as to the other children, the decision of the trial court ws against the manifest weight of the evidence. Butt, at 57-59.

Here, there was no evidence at all as to Pamela Ray's treatment of her surviving children, therefore, the decision of the trial court was against the manifest weight of the evidence. "To expose . . . children to a reasonable possibility of abuse is something this court (should) not do. On the other hand, no child in any family is free from the possibility of future abuse and we cannot afford to sever the natural ties between parent and child and cause that loss to both of them on the mere possibility that the child may be abused" Butt, at 59.

No. _____

IN THE SUPREME COURT OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS Petitioner-Appellee, vs. PAMELA RAY, Respondent-Appellant In the Interest of Gregory Ray, Tamidj Agnew, LaTresha Ray a/k/a LaTresha Agnew, Minors.	)

Petition for Appeal as a Matter of Right, or in the Alternative, Petition for Leave to Appeal from the Judgment of the Appellate Court of Illinois, Fifth District

George R. Ripplinger
Attorney for Respondent
Appellant, Pamela Ray

5. Review by the Supreme Court is warranted as of right because the question of the constitutionality of Chapter 40, Sec. 1501 D (f) Ill. Rev. Statutes under the 14th Amendment to the United States Constitution and under Article 1, Section 2 of the Illinois Constitution arose by reason of the decision of the Appellate Court.

In the alternative leave to appeal should be allowed as a matter of sound judicial discretion; because this cause involves unique constitutional issues in the area of fundamental rights.

This subsection of the Adoption Act is conclusive upon the parent. If a parent is convicted of murder by child abuse, parental rights may be terminated as to all surviving children without requiring any proof as to the parents' treatment of the surviving children. Indeed, the parent may not present a defense as is shown in this case, because the statute results in a conclusive presumption of unfitness.

The Appellate Court correctly held that the strict scrutiny test applied to the equal protection challenge in this case. The problem is that the Appellate Court only held that due to the fact that parental rights are fundamental. There are two fundamental rights involved in this case, however, parental rights and the right to due process. The State must therefore show that the classification is not only reasonable, but necessary to promote a compelling State interest if the statute is to pass constitutional muster. There is no question

that the state has a compelling interest in protecting its minor citizens. The way in which this statutue operates is not necessary, however, and in fact infringes on these two fundamental rights. It is not necessary to preclude a parent from presenting any defense the parent deems relevant which is what this statute does. All it would take would be a little time. Many parents may not even choose to present a defense. "Procedure by presumption is always cheaper and easier than individualized determination." Stanley v Illinois, 405 US 645, 31 L Ed 2d 551,562 (1972). But, it is not necessary. The children may be temporarily removed from the custody of the parent until the hearing is held as was the case here. It is in the denial of a hearing that the statute operates to deny Pamela Ray equal protection.

The Appellate Court found that to discuss the possible defenses of Pamela Ray without a record would be speculation, contrasting this cause with In the Interest of Baby Boy Butt, 75 Ill. App. 3d 587, 395 NE2d 1 (2d Dist. 1979), where the parent presented evidence. The Appellate Court has missed the point. The point is that there is no record in this case because the operation of the statute denies her the right by reason of the conclusive presumption that it contains. There is no record because she was denied, by operation

of the statute, of her right to make a record or present a defense. The record is totally silent as to her treatment of these surviving children, and yet, the trial court ruled her unfit on the sole basis of her treatment of another child.

Studies have shown that it is not uncommon for one child in a family to be abused while the other are well cared for. For example, R. Helfer and C. Kempe Child Abuse and Neglect, (1976). Furthermore, many other studies show that the abusing parent can be treated socially and psychologically and may never abuse their children again. For example, Martin, The Abused Child, (1976).

The major reasons for child abuse have been identified in many studies. Many times the parent is immature and dependant. They are socially isolated and have poor self-esteem. They usually have difficulty in seeking or obtaining pleasure. Oft times they have disorted perceptions of the child, feeling that the child be providing love and attention to them when, in fact, young children need more than they are able to give. It is not uncommon in these situations to actually see a form of role reversal where the parent seeks to receive a parent-like reaction and reinforcement from the child. Fear of spoiling the child and a strong belief in punishment are also common. Finally,

an impaired ability to empathize with the child's needs and to respond appropriately lead to much abuse, for example, not understanding the many reasons why a child might cry or behave poorly; many times only acting out a need for attention or, more basic, hunger. Most abusers come from low income, poorly educated urban families. Fifty-five percent have not completed high school. Forty-eight percent of the fathers are unemployed. In twenty nine percent of the cases there is no man regularly in the home. The Abused Child, above.

As can be seen, may of the factors leading to child abuse are situational or environmental and are capable of being changed. Furthermore, through treatment, education and counseling, most of the rest could be removed as a causitive factor.

What about Pamela Ray? There are few facts in the record. We do know that she was young, only seventeen. We know that she was not proved to have done anything to the child herself. It was done by a boyfriend, Norvelle Hicks, who was indicted with her. Pl. Ex. 4.

There are three other children and no criminal acts were charged regarding their care. Nor does the record establish abuse of the other children by their mother.

But Pamela Ray is not the only parent involved here. This statute treats all the same. She was

sentenced to a jail term. There could conceivably be one who would receive probation due to the particular facts of the case. Yet all are treated the same. Clearly this statute is violative of the Equal Probation Clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 2 of the Illinois Constitution. Parents at least deserve the right to a hearing during which they may present their side of the situation and propose a reasonable alternative to losing their children.

> ". . . (T)he very nature of due process negates any concept of inflexible procedures universably applicable to every imaginable situation. . . (W)hat procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as the private interest that has been affected by governmental action." Cafeteria Workers v. McElroy, 367 US 886, 895 (1961).

The governmental interest here is in protecting its young citizens who cannot protect themselves. This is a laudible and important purpose. And yet, is the only answer to wrest the child from its home? Surely that is not the only answer. Removing criminals from society temporarily by imprisonment does not always provide a permanent cure. Would it not be better in some cases to leave the child in the home or temporarily remove the child and work to re-establish the home environment?

To paraphrase Justice Frankfurter's concurring

opinion in Kovacs v. Cooper, 336 US 77, 95 (1949);

> "The private interest here, that of a (parent) in the children he has (birthed) and raised, undeniably warrants deference. It is plain that the interest of a parent in the companionship, care, custody, and managment of his children come(s) to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements."

The Courts have frequently held that irrebutable presumptions are invalid in cases of lesser importance than breaking family ties. In Bell v. Burson, 402 US 535, (1971) the Court held that an uninsured motorist was entitled to a hearing as to fault before his driver's license could be revoked where he failed to post security for damage in an automobile accident.

The Court has held that the mere occurrance of an automobile-train collision at a grade crossing cannot be conclusively presumed to result from the railroad's negligence. Western & A.R.R. v. Henderson, 279 US 639 (1929).

An irrebutable presumption that gifts within two years of death are in contemplation of death for estate tax purposes was struck down in Heiner v. Donnan, 285 US 312 (1932) as violative of due process.

> "State legislation declaring that proof of one fact or a group of facts shall constitute prima facie evidence of the main or ultimate fact in issue is valid if there is a rational correction between what is proved and what is to be inferred.

> If the presumption is not unreasonable and is not made conclusive of the rights of the person against whom raised, it does not constitute a denial of due process of law (citation omitted. A prima facie presumption casts upon the person against whom it is applied the duty of going forward with his evidence on the particular point to which the presumption violates. A statute creating a presumption that is arbitrary as that operates to deny a fair opportunity to repel it violates the due process clause of the Fourteenth Amendment." Manley v Georgia, 279 US 1, 49 S. Ct. 215, 217 (1929).

This was the ruling of the Court regarding a Georgia statute to the effect that every insolvency of a bank should be deemed conclusively criminally fraudulant as to that bank's president and directors.

Surely the interest of parents in their children are higher and more worthy of protection than the foregoing. Yet, Ch. 40, Sec. 1501 D (f) Ill. Rev. Statutes has that same effect. A parent is not entitled to introduce any evidence to rebut this presumption. Admittedly it may establish a prima facie case, but a hearing must be afforded the parent to comply with the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution and Article 1, Section 2, of the Illinois Constitution.

No evidence was presented as to Pamela Ray's treatment of her surviving children. The order of the trial court pertained only to these surviving children. The only issue ruled upon was her conviction relating

to a deceased child R141-143, Pl. Ex. 4, Pl. Ex. 5.

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Here, there was no evidence at all as to Pamela Ray's treatment of her surviving children, therefore, the decision of the trial court was against the manifest weight of the evidence. "To expose . . . children to a reasonable possibility of abuse is something this court (should) not do. On the other hand, no child in any family is free from the possibility of future abuse and we cannot afford to sever the natural ties between parent and child and cause that loss to both of them on mere possibility that the child may be abused" Butt, at 59.

NO. 79-465

IN THE
APPELLATE COURT OF THE STATE OF ILLINOIS
FIFTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- PAMELA RAY, Defendant-Appellant.	Appeal from the Circuit Court of the 20th Judicial Circuit St. Clair County, Illinois No. 78-J-146 Honorable C. Glenn Stevens Judge Presiding

PETITION FOR CERTIFICATE OF IMPORTANCE

Comes now the Respondent-Appellant, Pamela Ray, by her attorney, George R. Ripplinger, Jr. and petitions this Honorable Court to grant a Certificate of Importance to take her appeal herein to the Illinois Supreme Court and as grounds therefor says:

1. The decision of this Honorable Court was adverse to Pamela Ray.

2. The issues in this cause involve the constitutionality of a statute of the State of Illinois under the United States and Illinois Constitutions under the respective equal protection and due process clauses thereof.

3. Neither the Illinois nor the United States Supreme Courts have ever ruled on the appropriate test for an equal protection challenge to a statutory ground for a finding of parental unfitness.

4. This cause involves fundamental rights; that of parental rights and due process of law.

5. In all of the cases cited by this Honorable Court, the parties were granted a hearing to allow them to present whatever defense they chose contrary to the facts of this cause and distinguishing this cause from those relied upon by this Honorable Court on the due process issue.

Respectfully submitted,

George R. Ripplinger, Jr.
Ripplinger & Dixon
7215 West Main Street
Belleville, Illinois 62221

80-6607

NO.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

PAMELA RAY,

Appellant,

ORIGINAL COPY

v.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

On Appeal From The Appellate
Court Of Illinois,
Fifth District

APPELLEE'S MOTION TO DISMISS OR AFFIRM

TYRONE C. FAHNER,
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JACK DONATELLI,
Assistant Attorney General,

OF COUNSEL.

QUESTIONS PRESENTED

1. Whether a parent is denied due process of law where her parental rights are terminated because she has a criminal conviction resulting from the death of her child by physical abuse?

2. Whether a parent is denied equal protection of the law where her parental rights are terminated because she has a criminal conviction resulting from the death of her child by physical abuse?

INDEX

Page

QUESTIONS PRESENTED..... i

TABLE OF AUTHORITIES..... iii

OPINION BELOW..... 1

NATURE OF THE CASE..... 1

ARGUMENT:

PARENTAL RIGHTS MAY BE TERMINATED WHERE A PARENT HAS A CRIMINAL CONVICTION RESULTING FROM THE DEATH OF A CHILD BY PHYSICAL ABUSE..... 3

A.

The Statute Does Not Violate A Parent's Right To Due Process Of Law..... 3

B.

The Statute Does Not Violate A Parent's Right To Equal Protection Of Law..... 5

CONCLUSION..... 7

TABLE OF AUTHORITIES

Page

Estelle v. Dorrough, 420 U.S. 534, 95 S.Ct. 1173, 43 L.Ed.2d 377 (1975) 6

Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976) 5

McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101 (1961) ... 6

San Antonia Independent School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed. 16 (1973) 5

Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322 (1969) ... 5

Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) 4,6

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

PAMELA RAY,

Appellant,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

On Appeal From The Appellate
Court Of Illinois,
Fifth District

APPELLEE'S MOTION TO DISMISS OR AFFIRM

The appellee moves this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Appellate Court of Illinois, Fifth District, on the ground that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

OPINION BELOW

The opinion below is cited in People v. Ray, 88 Ill. App. 3d 1010, 411 N.E.2d 88 (5th Dist. 1980) and is attached to this motion.

NATURE OF THE CASE

A petition was filed in the Circuit Court of Illinois, asking that the respondent's parental rights be terminated.

Subsequently, the respondent was convicted of murder and cruelty to children and sentenced to concurrent terms of twenty and two years. The victim was the respondent's seventeen month old daughter.

The Appellate Court of Illinois affirmed the conviction in People v. Ray, 80 Ill. App. 3d 151, 399 N.E.2d 977 (5th Dist. 1979). The Illinois Supreme Court denied leave to appeal on May 29, 1980.

On March 16, 1979, following the conviction, the State filed a motion for summary judgment, requesting that the respondent be found unfit pursuant to the Illinois Adoption Act, Ill. Rev. Stat. 1979, ch. 40, § 1501(D)(f). On May 9, 1979, the Circuit Court granted this motion. The Appellate Court affirmed this decision in People v. Ray, 88 Ill. App. 3d 1010, 411 N.E.2d 88 (5th Dist. 1980). The Supreme Court denied the petition for leave to appeal on January 30, 1981.

The respondent now petitions this Court to review the termination of her parental rights.

ARGUMENT

PARENTAL RIGHTS MAY BE TERMINATED WHERE A PARENT HAS A CRIMINAL CONVICTION RESULTING FROM THE DEATH OF A CHILD BY PHYSICAL ABUSE.

The decision below should not be reviewed or altered. The respondent was found to be an unfit parent after she was convicted of the murder of her seventeen month old daughter. In Illinois, a parent can be declared unfit on the following ground:

* * *

> a criminal conviction resulting from the death of any child by physical child abuse.

* * *

Ill. Rev. Stat. 1979, ch. 40 § 1501 D(f). This Illinois law is constitutional and does not deny a parent due process nor equal protection. The decision is a correct one and does not warrant review by this Court.

A.

The Statute Does Not Violate A Parent's Right To Due Process Of Law.

The respondent urges that she was denied due process because no evidence was introduced as to her treatment of the remaining children before her parental rights were terminated. However it has been proved beyond a reasonable doubt that the respondent was guilty of the murder of one of her children and was convicted of murder and cruelty to children. Such convictions, the legislature has deemed, demonstrate parental unfitness. The statute intends that where a parent has engaged in prior child abuse of such a serious nature, a court need not await injury to each child of that parent before terminating parental rights as to those other children. This legislation, for the protection of the children, is an overriding state interest that withstands constitutional attack.

A parent's rights are terminated under § 1501 D(f) only after there has been a full hearing on all relevant factual issues. The section applies only when it has been resolved that physical child abuse caused a death and this death formed the basis of a conviction. The rules of criminal procedure, the rules of evidence, and the reasonable doubt

standard safeguard all due process rights at this determination.

Once it is shown that the parent has killed a child by means of physical abuse, the legislature has provided that the other minors be removed from that parent's custody for the welfare and safety of the children. This is clearly a legislative end permitted by the Fourteenth Amendment. Stanley v. Illinois, 405 U.S. 645, 653, 92 S.Ct. 1208, 1213. Moreover, the laws of other states making child abuse a ground for termination of parental rights have been upheld against constitutional attack and applied to terminate rights to more than one child based on a finding of abuse of a single child. See Annot., 53 A.L.R.3d 605 (1973).

Under the Illinois statute, mere criminal conviction alone does not demonstrate unfitness. Rather, specification of the victim (a child) and the circumstance (physical abuse as the cause of death) show that the section is rationally related to the goal of protecting children from abuse. A determination that homicide by child abuse is so dangerous to children who come under the care of the offender that it should be made a ground of unfitness is both a rational and a legitimate state interest.

The respondent has been convicted of murder and cruelty to children. This fact led to the legal result that her parental rights were terminated. This legal result promotes a legitimate state interest in protecting children who cannot protect themselves. Respondent's claim is without merit and unworthy of review.

B.

The Statute Does Not Violate A Parent's Right To Equal Protection Of Law.

A strict scrutiny analysis in terms of whether the classification is necessary to promote a compelling government interest is clearly not called for. See Shapiro v. Thompson, 394 U.S. 618, 634, 89 S.Ct. 1322, 1331 (1969). This is because strict scrutiny is warranted "only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 313, 96 S.Ct. 2562, 2566, 49 L.Ed.2d 520 (1976).

The class defined in § 1501 D(f) is not a "suspect class" because it is not a group historically disadvantaged on the basis of race or some similarly immutable quality by virtue of which one is born into the class. Rather, it is proved personal misconduct which brings one within the class defined by that section. San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 28, 93 S.Ct. 1278, 1294, 36 L.Ed.2d 16 (1973).

Neither is respondent's interest in retaining her parental rights a fundamental right for purposes of equal protection analysis. Fundamental rights are those which are explicitly or implicitly guaranteed by the Constitution and lie at the heart of the relationship between the individual and the republican form of nationally integrated government. Included are such interests as the expression of ideas, participation in the political process, travel among the states, and privacy regarding only the most intimate aspects of personal life. Rodriguez, 411 U.S. at 32-34, 93 S.Ct. at 1296-7. Respondent's interest here, however strong and important it may be, is not one among these fundamental rights.

Therefore, the State has wide discretion in enacting legislation which affects some classes differently than others, provided the classification is relevant to the State's objective, and the legislation tends to promote some interest of the State. McGowan v. Maryland, 366 U.S. 420, 425-6, 81 S.Ct. 1101, 1105 (1961). "[L]egislation may impose special burdens upon defined classes in order to achieve permissible ends." Estelle v. Dorrough, 420 U.S. 534, 539, 95 S.Ct. 1173, 1176, 43 L.Ed.2d 377 (1975).

The legislative purpose here involved, protecting the physical welfare of minors and providing for their removal from the custody of their parents when their welfare or safety cannot otherwise reasonably be secured, is clearly among legislative ends permitted by the Fourteenth Amendment. Stanley, supra, 405 U.S. at 653, 92 S.Ct. at 1213. The question, then, is whether the grounds for a finding of parental unfitness provided in section 1501 D(f) rests upon a classification which tends reasonably to promote this end. That is, is this end promoted by permitting the courts to find a person unfit on the ground of membership in a class of persons convicted of killing a child by means of physical abuse? The question almost answers itself. Making proof of fatal child abuse a statutory ground of parental unfitness obviously promotes the State's interest in protecting the welfare and safety of minors.

Therefore, the Illinois statute does not violate any equal protection standard, and the claim is unworthy of review.

CONCLUSION

For the foregoing reasons, the appellee asks that this Court dismiss the appeal from the Appellate Court of Illinois or, in the alternative, affirm the judgment, since the questions presented are not deserving of further review.

Respectfully submitted,

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COUNSEL FOR APPELLEE.

JACK DONATELLI,
Assistant Attorney General,

OF COUNSEL.

APPENDIX

1. to negotiate the purchase price of the land,

2. to discuss project design and HUD requirements, and

3. to schedule the remaining stages in the Turnkey program.

If the drawings, specifications, and price are satisfactory, they will be submitted to the Government with a request for an annual contributions contract under which the acquisition of the property will be financed. The Authority will promptly execute such contract when it is tendered by the Government.

Promptly upon the execution of an Annual Contributions Contract between the Government and the Authority, the Authority will issue to you a firm letter of Intent setting forth the conditions under which you will prepare working drawings and specifications and under which you and the Authority will enter into a Contract of Sale of the property. * * *

If this letter represents your understanding, please sign and return four copies."

The copies were signed and returned by Rutledge dated May 25, 1972. No letter of intent was ever issued and no contract of sale was ever agreed upon. But, the services extended before and after the above-quoted letter were offered with the understanding embodied in it and the Turnkey Handbook.

Accordingly, we find no reason to disturb the holding of the court under the standards established by the *Pedrick* rule.

Affirmed.

JONES, P. J., and KASSERMAN, J., concur.

88 Ill.App.3d 1010
44 Ill.Dec. 182

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Pamela RAY, Defendant-Appellant.

In the Interest of Gregory RAY, Tamidj Agnew, LaTresha Ray a/k/a LaTresha Agnew, Minors.

No. 79-465.

Appellate Court of Illinois, Fifth District.

Sept. 18, 1980.

Mother appealed from judgment of the Circuit Court, St. Clair County, C. Glennon Stevens, J., terminating her parental rights to her three children. The Appellate Court, Karns, J., held that: (1) applicable equal protection standard, in determining whether statute providing that criminal conviction resulting from death of any child by physical abuse constituted ground for finding of parental unfitness, was whether statutory classification was rationally related to legitimate governmental purpose; (2) statute was not unconstitutional as applied to mother who had been convicted of murder and cruelty to children on evidence of common design and participation in her boyfriend's course of torture and abuse that resulted in death of her child; (3) statute properly promoted overriding state interest and thus withstood constitutional attack on its face, whether viewed as rationally related to legitimate state purpose or necessary to promote compelling state interest; (4) statute did not impose impermissible "irrebuttable" or conclusive presumption; and (5) mother, who had criminal conviction resulting from death of her child by physical child abuse, was unfit parent and parental rights were correctly terminated.

Affirmed.

1. Constitutional Law ⇐242.1(4)

Termination of parental rights based on mere finding of mental retardation

would be arbitrary and irrational under traditional equal protection test. U.S.C.A. Const. Amend. 14.

2. Constitutional Law ⇐242.1(4)

Applicable equal protection standard, in determining whether statute providing that criminal conviction resulting from death of any child by physical abuse will constitute ground for finding of parental unfitness was unconstitutional, was whether statutory classification was rationally related to legitimate governmental purpose. S.H.A. ch. 40, § 1501, subd. D(f).

3. Constitutional Law ⇐42(2)

One who would attack allegedly unconstitutional feature of statute must bring himself within class to whom law is unconstitutional. U.S.C.A.Const. Amend. 14.

4. Constitutional Law ⇐242.1(4)
Infants ⇐132

Statute providing that criminal conviction resulting from death of any child by physical abuse constitutes ground for finding of parental unfitness was not unconstitutional under equal protection clause as applied to mother in determination that mother was unfit parent where mother had been convicted of murder and cruelty to children on evidence of common design and participation in her boyfriend's course of torture and abuse that resulted in death of her child. S.H.A. ch. 40, § 1501, subd. D(f); U.S.C.A.Const. Amend. 14.

5. Infants ⇐132

Statute providing that criminal conviction resulting from death of any child by physical abuse constituted ground for finding of parental unfitness properly promotes overriding state interest and thus withstands constitutional attack on its face, whether viewed as rationally related to legitimate state purpose or necessary to promote compelling state interest. S.H.A. ch. 40, § 1501, subd. D(f); U.S.C.A.Const. Amend. 14.

6. Constitutional Law ⇐255(4)
Infants ⇐132

Statute providing that criminal conviction resulting from death of any child by physical abuse constituted ground for finding of parental unfitness did not impose impermissible "irrebuttable" or conclusive presumption of unfitness, contrary to due process clause, of mother who had been convicted of murder for abuse that resulted in death of her child where no presumption was employed in determination that mother was unfit parent, but rather, State had burden of proving and did prove mother's unfitness on ground held proper; "irrebuttable presumption" challenged by mother was nothing more than relation between fact and its legal result. S.H.A. ch. 40, § 1501, subd. D(f); U.S.C.A.Const. Amend. 14.

7. Infants ⇐181

Mother, who had criminal conviction resulting from death of her child by physical child abuse, was unfit parent and her parental rights were correctly terminated under statute providing that criminal conviction resulting from death of any child by physical abuse would constitute ground for finding of parental unfitness. S.H.A. ch. 40, § 1501, subd. D(f).

George R. Ripplinger, Jr., Belleville, for defendant-appellant.

Clyde L. Kuehn, State's Atty., Belleville, Martin N. Ashley, Deputy Director, Stephen E. Norris, Staff Atty., State's Attys. Appellate Service Commission, Mount Vernon, for plaintiff-appellee.

KARNS, Justice:

Respondent Pamela Ray appeals from the judgment of the Circuit Court of St. Clair County terminating her parental rights to her three children, Gregory Ray, age 6, Tamidj Agnew, age 5, and Latresha Ray a/k/a Latresha Agnew, age 2. Specifically, respondent attacks the constitutionality of section 1D(f) of the Adoption Act (Ill.Rev. Stat.1979, Ch. 40, par. 1501D(f)), insofar as it provides that "* * * a criminal conviction resulting from the death of any child by physical abuse * * *" constitutes a ground for a finding of parental unfitness.

The Department of Children and Family Services filed a petition in the trial court alleging that the children were neglected and the respondent was an unfit parent, and requesting that the children be adjudicated wards of the court, that the respondent be adjudicated unfit and her parental rights terminated, and that a guardian be appointed with power to consent to adoption. Subsequently, the respondent was convicted of murder and cruelty to children and sentenced to concurrent terms of 20 and 2 years. The victim was respondent's daughter, Sheritta Agnew, who was 17 months of age at the time of her death. We affirmed the respondent's conviction, and the supreme court denied leave to appeal *People v. Ray* (5th Dist. 1979), 80 Ill. App.3d 151, 35 Ill.Dec. 688, 399 N.E.2d 977, *leave to appeal denied* (May 29, 1980).

Following defendant's conviction, the State filed a motion for summary judgment in the instant proceeding alleging that no material issue of fact existed concerning the respondent's unfitness under section 1D(f) of the Adoption Act, and requesting that the respondent be found unfit and her parental rights terminated. Subsequently, the court granted this motion. Also, in proceedings not challenged here, the court found the children neglected as alleged in the petition, adjudicated them wards of the court, and entered guardianship orders.

Respondent contends that the statute violates equal protection and due process. The State asserts that the applicable equal protection standard is whether the statutory classification is rationally related to a legitimate governmental purpose, rather than the "strict scrutiny" analysis of whether the classification is necessary to promote a compelling governmental interest. The respondent apparently concedes that the rational relationship test applies, for in her brief it is said that the "determining question" is whether "* * * the classification is reasonable in light of its purpose * * *."

The parties have not cited nor are we aware of any case in which our own supreme court or the United States Supreme Court has squarely decided the appropriate test for an equal protection challenge to a statutory ground for a finding of parental unfitness. However, in *Regenold v. Baby Fold, Inc.*, (1977), 68 Ill.2d 419, 12 Ill.Dec. 151, 369 N.E.2d 858, *appeal dismissed* (1978) 435 U.S. 963, 98 S.Ct. 1598, 56 L.Ed.2d 54, our supreme court did review a mother's claim that her consent to adoption was procured by fraud and duress and her constitutional attack on the law concerning termination of parental rights by consensual adoption. In considering the constitutionality of the legislative restriction on revocability of parental consent, the court balanced the state's *parens patriae* authority to legislate for the protection of children against the right to maintain parental ties with one's natural child. The court quoted the test stated in *Meyer v. Nebraska* (1923), 262 U.S. 390, 399–400, 43 S.Ct. 625, 627, 67 L.Ed. 1042, 1045, that parental rights "* * * may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect." (68 Ill.2d at 438, 12 Ill.Dec. at 159, 369 N.E.2d at 866.) The court then applied this test, holding that the legislative restriction on the revocability of consent to adoption was reasonably related to the State's authority to legislate with regard to the adoption of children and for their general welfare.

Although *Regenold* involved consensual adoption, it constitutes some authority for the application of the rational relationship test here, where legislation for the termination of parental rights and protection of children is again called into question. However, the application of "strict scrutiny" would appear to be supported by a recent decision of this court. (*Helvey v. Rednour* (1980) 86 Ill.App.3d 154, 41 Ill.Dec. 671, 408 N.E.2d 17.) The issue in *Helvey v. Rednour* was the constitutionality of a provision of the Adoption Act allowing nonconsensual termination of parental rights, without a judicial determination of parental unfitness, based on a finding that the parents were mentally retarded and would remain so for the forseeable future. (Ill.Rev.Stat.1979,

Ch. 40, par. 1510(e).) We cited *Meyer v. Nebraska* and other more recent Supreme Court cases concerning contraceptives (*Griswold v. Connecticut* (1965), 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510; *Carey v. Population Services International* (1977), 431 U.S. 678, 97 S.Ct. 2010, 52 L.Ed.2d 675), abortion (*Roe v. Wade* (1973), 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147), and interstate travel (*Memorial Hospital v. Maricopa County* (1974), 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306) to support the conclusion that parental rights are "fundamental" and may not be terminated by State law unless the law advances a compelling state interest. The compelling nature of the State's interest in protecting the welfare of a child was duly noted. However, it was reasoned that not every retarded parent could be found unfit under grounds enumerated in section 1D of the Adoption Act, and that retarded parents, like others, were entitled to a judicial determination of their fitness prior to termination of their parental rights.

[1, 2] This last conclusion is certainly correct, and it might appropriately have been reached by simply holding that termination of parental rights based on a mere finding of mental retardation would be arbitrary and irrational under the traditional equal protection test. As in *Helvey*, the various generalized pronouncements of the Supreme Court relating to parental rights have been interpreted to establish the fundamental nature of those rights in the context of a substantive due process analysis of Iowa parental rights' termination statutes. (*Alsager v. District Court of Polk County, Iowa* (S.D.Iowa 1975) 406 F.Supp. 10, *affirmed* (8th Cir. 1976), 545 F.2d 1137.) No doubt, the pronouncements of the Supreme Court are entitled to careful consideration, perhaps even when their relevance to the issue at hand is rather oblique at best. Nevertheless, without clear authority, we do not feel compelled to depart from the conventional analysis of whether legislation is arbitrary and irrational.

The respondent acknowledges the State's legitimate interest in protecting children who cannot protect themselves. She nonetheless argues that a parent who abuses and kills one child will not automatically mistreat her other children and that the causes of abuse can be treated and eliminated.

Laws of other states making child abuse a ground for termination of parental rights have been upheld against constitutional attack and applied to terminate rights to more than one child based on a finding of abuse of a single child. (Annot., 53 A.L.R.3d 605 (1973).) In Illinois, a finding of parental unfitness on the ground of "depravity" and termination of parental rights to a son and two daughters was affirmed solely upon evidence that the parents had sold one of the daughters into marriage. (*In Interest of Flynn* (3d Dist. 1974), 22 Ill.App.3d 994, 318 N.E.2d 105.) In the context of neglect proceedings based on child abuse, it has been held that all the children of abusing parents may be found neglected even though all have not yet been abused. (*In Interest of Brooks* (1st Dist. 1978), 63 Ill.App.3d 328, 20 Ill.Dec. 39, 379 N.E.2d 872); although, a neglect finding in a similar case was reversed based on affirmative evidence of the mother's care and concern for the unabused child. *In Interest of Baby Boy Butt* (2d Dist. 1979), 75 Ill.App.3d 587, 32 Ill.Dec. 54, 395 N.E.2d 1.

[3–5] We have affirmed the respondent's conviction of murder and cruelty to children on evidence of common design and participation in her boyfriend's course of torture and abuse that resulted in the death of her child. (*People v. Ray.*) The conflict inherent in parental fitness legislation between the State's interest in legislation for the protection of children and the continuation of parental rights must be resolved in favor of the former in this case. One who would attack an allegedly unconstitutional feature of a statute must bring himself within the class to whom the law is unconstitutional. (*City of Chicago v. Lawrence* (1969), 42 Ill.2d 461, 248 N.E.2d 71, *appeal dismissed* (1969), 396 U.S. 39, 90 S.Ct. 263, 24 L.Ed.2d 208.) To speak hopefully of the possibility of treatment and rehabilitation or to hypothesize circumstances where a

parent may abuse one child but not another would be pure speculation on the record before us. Furthermore, apart from the specific facts before us, we believe that the statute properly promotes an overriding state interest and thus withstands constitutional attack, whether viewed as rationally related to a legitimate state purpose or necessary to promote a compelling state interest.

Yet to be discussed is the respondent's reliance on *Stanley v. Illinois* (1972), 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551. *Stanley* held that to presume an illegitimate father unfit as a parent is contrary to the Due Process Clause of the Fourteenth Amendment, and that the parental rights of an illegitimate father, like those of any other parent, could not be terminated without a judicial determination of unfitness.

[6] The respondent argues that the statute before us also imposes an impermissible "irrebuttable" or conclusive presumption. We fail to see that the statute constitutes a conclusive presumption or a presumption in any sense.

[7] In *Stanley*, the father was presumed unfit in the sense that, because of illegitimacy, he was required to institute a proceeding and to bear the burden of establishing parental authority for custody of his children. No such presumption was employed in the instant case. Rather, the State bore the burden of proving and did prove the respondent's unfitness on a ground we have held proper. As argued by the State, the "irrebuttable presumption" challenged by the respondent is nothing more than the relation between a fact and its legal result. In light of the undisputed facts that the defendant had a criminal conviction resulting from the death of any child by physical child abuse, the court correctly determined that there was no material issue of fact and granted summary judgment finding her unfit and terminating her parental rights.

The judgment of the Circuit Court of St. Clair County is affirmed.

AFFIRMED.

JONES, P. J., and SPOMER, J., concur.

88 Ill.App.3d 968
44 Ill.Dec. 186

Alan ROTHENBUECHER,
Plaintiff-Appellee,

v.

Margaret A. TOCKSTEIN and Hazel B. Jones.

Margaret A. Tockstein,
Defendant-Appellant.

No. 79-535.

Appellate Court of Illinois,
Fifth District.

Sept. 18, 1980.

Offeree brought action against offeror for specific performance of a sale contract to purchase a duplex. The Circuit Court, St. Clair County, Patrick J. Fleming, J., entered judgment for offeree, and offeror appealed. The Appellate Court, Harrison, J., held that no valid contract of sale existed between the parties where acceptance of the offer was not communicated to offeror within a 24-hour period as required by the offer.

Reversed.

1. Specific Performance ⇐28(1)

Where a contract is in doubt so that an obligation to fulfill the alleged promise may never have arisen, equity will decline to enforce performance.

2. Vendor and Purchaser ⇐17

Mutual assent necessary to formation of a bilateral contract requires the communicated expression of a promise to purchase and an acceptance in form of a promise to sell.

3. Contracts ⇐19

An offeree's power to accept is terminated by either revocation of the offer or nonoccurrence of any condition of acceptance under terms of the offer.